IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO 3713 OF 2003

IN

SUIT NO. 3960 OF 2003

Ranbaxy Laboratories Limited)
a company incorporated under the)
provisions of the Companies Act,)
1956 and having its registered)
office at A-11, S. A. S. Nagar,)
Ropar, Punjab and an administra-)
tive office at Ranbaxy House,)
Plot No. # 89, 15th Road, MIDC,)
Andheri (E), Mumbai - 400 093.)..... Plaintiff.

Versus

Cherryb Pharma, a firm having)
its office at Vanrai Society,)
Raywoods, Lonawala, Mumbai.)..... Defendant.

Mr. M.P.S. Rao for the plaintiff.

None for the defendant.

CORAM : ANOOP V.MOHTA J.

DATE : 27TH OCTOBER, 2005.

ORAL JUDGMENT :

. The present notice of motion has been taken out by the plaintiff in a suit filed for invoking the provisions of Trade and Merchandise Marks Act, 1958 (for Short Trade Mark Act) and Copyright Act 1951 (for short Copyright Act) and claimed a permanent injunction restraining the defendant, its partners and proprietary licence as the case may be , its servants and agents, distributors stockists and the like from manufacturing marketing, selling, offering for sale, advertising, directly or indirectly or dealing in any manner in any medicinal or pharmaceutical preparation in any form bearing the trademark "REWITAL" and/or using the said trademark "REWITAL" complained of and/or any other trade mark which is deceptively similar to the trade mark ’REVITAL" similar to that of the plaintiff and amounts to passing off, till the final disposal of the suit. The plaintiff’s trade mark is "REVITAL" and therefore,

has challenged the defendant's marketing, use and seal of trade mark " REWITAL". By order dated 19th December, 2003 on this notice of motion, the learned Single Judge after considering the material on the record granted ad interim relief in terms of prayer clause (a) except portion bracketed in red. The said prayer clause (a) was granted without notice to the defendant. The leave to amend the suit as well as notice of motion itself, the ad interim relief has been in operation since then.

2. By an order dated 7th June, 2004, the leave has been granted to move the court for seeking substitute service. The plaintiffs has filed on the record the affidavit of I.C. Patel dated 21st September, 2004, in support of proving service of notice of motion upon the defendant by way of affixing the notice on the board of High Court. The notice of motion has been called out for final hearing. None appeared for the defendant again.

3. Heard the learned Counsel, Mr M.P.S. Rao, appearing for the plaintiff and with his assistance I have gone through the plaint, annexures to the plaint and the affidavit in support of the notice of motion.

4. At this stage, uncontroverted following submissions itself are sufficient to confirm the ad interim order.

5. The plaintiff is a company incorporated under the Indian Companies Act, 1956 and having its Registered Office at A-11, SAS Nagar, Ropar, Punjab and Head Office at 19, Nehru Place, New Delhi and Business office at Ranbaxy House, Plot# 89, 15th Road, MIDC, Andheri (E), Mumbaui-400 093.

6. The trade mark "REVITAL" is one of the well known product of the plaintiff company. The said trade mark is a nutritional category product (ginseng with multi vitamins and minerals) The said product is available in India and abroad. The said trade mark has been continuously used since 1988. The word "REVITAL" was adopted by the plaintiff, which is coined, unique and an invented word. The said word is registered with the Trade Mark Registry having its registration No. 447972 in class No.05. The plaintiff has also got the registration of trade mark REVITAL renewed upto the year 2006. The plaintiff has also got the copyright

registered for the cartons under the provisions of Copyright Act, 1957. The plaintiff, as per the market strategy and requirement, took various steps to have the labels, network, blocks, dies stationery and sales promotional materials in relation to the trade mark. Accordingly, the said product is in the market and can be purchased by the consumer and/or layman even without any prescription of the Doctor. The wide publicity involving huge expenditure amounting to crores of Rupees during the short period of launching in the market, has earned tremendous reputation The product "REVITAL" is identified exclusively with the plaintiff and no one else. The product as well as photographs are also a part of the record and specially to years 1996 to 2002. All these documents and materials in support of the above averments are exhibited and part of the record including various supporting literatures. The plaintiff therefore, by virtue of prior adoption and long, continuous and extensive user apart from large scale publicity has acquired a commendable and an envitable reputation in the minds of traders and of the public being exclusive product of the plaintiff. The plaintiff’s right of exclusive use, need no further discussion. Therefore, any attempt by any person to use

deceptively similar marks without the consent would definitely amounting to violation of plaintiff’s legal right as contemplated under the Trade Mark and Copyright Acts.

7. The defendant started using its product under trade mark ’REWITAL" by manufacturing and marketing around March,2003. This word "REWITAL" is very similar and identical to mark "REVITAL" of the plaintiff. The pronunciation of the two words is exactly the same. Except the word "W" of the defendant, the trade mark is quite identical and similar to the trade mark of the plaintiff "REVITAL". The defendant has further copied the exact design and colour combination on the carton of its product as that of the REVITAL, being the plaintiff’s product. The defendant was using the said trade mark REWITAL product which is identical to the product of the plaintiff being trade mark REVITAL. With the assistance of the learned Counsel appearing for the plaintiff, I have gone through the colour photographs of the carton and products manufactured and marketed by the defendant.

8. In spite of legal notice dated 31st March, 2003,

to the defendant, as the defendant failed to cease from using the trade mark REWITAL and failed to withdraw the stock of the impugned product and as the defendant failed and neglected to reply the said notice and was continuing the manufacture, distribution, marketing and selling its product, the plaintiff filed the present suit on 12th December, 2003, along with the notice of motion in question.

9. In the present case, in view of uncontroverted averments of the plaint and affidavit I am convinced with the defendant’s dishonest intention by adoption of mark "REWITAL" in respect of medicinal and pharmaceutical preparation is actuated with the clear intention of encashing upon the goodwill and reputation of the plaintiff, associated with its trademark and copyright in relation to the product. Therefore, such illegal adoption and use by the defendant which is identical to the plaintiff’s trade mark is bound to create confusion and deceptiveness about the purchasing in the mind of public and traders. The purchasing public will be induced into believing that the product being sold by the defendant also originates from the plaintiff’s source as they include unwary purchase and

old age people, woman, children and thereby amounting to passing off by the defendant of its goods and business as that of the plaintiff.

10. In reference to Copyright law and its principles the Court of appeal, in Sawakins V. Hperion Records Ltd. (2005) R.P.C. 32 elaborated the principles of Copyright law as under;

"The policy of copyright protection and its limited scope explain why the threshold requirement of an "original" work has been interpreted as not imposing objective standards of novelty, usefulness, inventiveness, aesthetic merit, quality of value. A work may be complete rubbish and utterly worthless, but copyright protection may be available for it, just as it is for the great masterpieces of imaginative literature, art and music. A work need only be, "original" in the limited sense that the author originated it by his efforts rather than slavishly copying it from the work produced by the efforts of another person."

11. The ingredients are made out as contemplated under order 39 rule 1 and 2 of Code of Civil Procedure and as observed by the Apex Court in Midas Hygiene Industries (P) Ltd and Another V. Sudhir Bhatia and others ((2004) (3) SCC 90, has observed in para 5 as under;

"The law on the subject is well settled. In cases of

infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest."

In the present case there is no much delay after issuance of a " cease-and-desist" notice. The defendant has failed to respond to the suit,and notice of motion. The interim relief as made and stated above has been invoked within the territorial jurisdiction of this Court. In (Exphar SA and another V. Eupharma Laboratories Ltd. and another (2004) 3 SCC 688) the Supreme Court has observed that even if there is some delay in claiming the protection of its world wide product, in the facts and circumstances no way disentitle the plaintiff to claim ad interim order as prayed. As observed in (Midas Hygiene) (Supra), and Satyam Infoway Ltd. V. Sifynet Solutions (P) Ltd. (2004) 6 S.C.C. 145) the balance of convenience and equity lies in favour of the plaintiff. The plaintiff will suffer irreparable loss and damages, if the injucntion is refused.

12. In view of the possibility of conclusion over the trade marks and copyright marks and the products in

question, the confusion and mistakes likely to result in respect of the product in question, as it is available in the open market and can be purchased by any consumer or layman without any prescription. The degree of resemblances between the market potentiality are similar in idea. They are basically similar in the nature, characters and performance of the goods of the rival products.

13. I have also noted the prefix and suffix of these two trade mark words "REVITAL" and " REWITAL" which is also sufficient to create confusion apart from the visual and phonetic expression of these two words. The carton used by the defendant are also deceptively similar in words, colour and character and styled including specimen of word trade mark "REWITAL" OR "REWITAL" on the carton.

14. Taking all these into account, the ad- interim order dated 19th December, 2003 is confirmed at this stage with liberty to take out an appropriate application, if necessary. The notice of motion is disposed of accordingly by keeping all other points open for the trial.

[11]

[ANOOP V. MOHTA, J.]